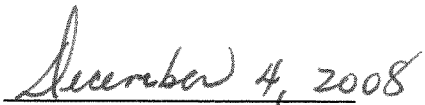

Approved for Release

Deborah A. Jefferson
Director for Human Resources
Management


December 4, 2008
Date

**DEPARTMENT OF COMMERCE
OFFICE OF HUMAN RESOURCES MANAGEMENT**

**HUMAN RESOURCES BULLETIN #095, FY09, 5 United States Code (U.S.C.),
“Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public
Law 110-417”**

SUBJECT: Annual Pay Limitation for Overseas Emergency Work

EFFECTIVE DATE: Upon release of this HR Bulletin for payments payable beginning in calendar year (CY) 2009.

EXPIRATION DATE: Effective until canceled or superseded.

SUPERSEDES: HR Bulletin FY08-078, “Annual Pay Limitation for Overseas Emergency Work”, dated March 4, 2008, and authorized under the “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417”.

BACKGROUND: In CYs 2005, 2006, 2007, and 2008, employees performing emergency work in overseas locations in connection with a military operation or an operation in response to a declared emergency were allowed to exceed the biweekly maximum earnings limitation¹. This authority has been extended for CY 2009 via passage of the “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417”.

PURPOSE: The purpose of this Bulletin is to authorize agencies to waive the annual limitation on total basic pay and premium pay and apply an alternative limit of up to \$227,300. Note that this amount is based on the *assumption* that the President will authorize a General Schedule increase of at least 2.8 percent in exercising his authority to allocate the 3.9 percent pay increase between the general increase and the locality pay increase. For this reason, the alternative limit of up to \$227,300 is anticipated and subject to change.

¹ On November 18, 2004, a Department-wide exception to the biweekly salary cap was authorized for employees performing work in connection with an emergency, its aftermath, or for mission-critical activities. This exception remains in effect until otherwise notified.

CHANGES: In accordance with Section 1101(a) of Public Law 110-417 (“Duncan Hunter National Defense Authorization Act for Fiscal Year 2009”), employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location may have an alternative annual earnings limitation applied in lieu of the annual earnings limitation. This means that employees may receive premium pay in CY 2009 to the extent that such premium pay would not cause the employee’s aggregate amount of basic pay and premium pay payable in the CY to exceed an expected \$227,300. This limitation is applied to premium payments that are “payable” during CY 2009. That is, payments earned in a pay period for which the pay date falls in the CY, or up to and including pay period 25, 2009. Premium pay for this purpose includes allowances, differentials, bonuses, awards, or other similar payments authorized under Title 5, U.S.C.

The alternative annual limitation continues to apply to an employee’s annual aggregate basic pay and premium pay even after the employee has stopped performing work covered under this authority. At that point the employee’s earnings will again be subject to the biweekly premium pay limitation under Title 5 U.S.C. 5547, and the employee may receive payments up to the section 5547 biweekly premium pay limitation each pay period until the alternative annual limitation is reached.

Section 1101 does not provide authority to waive the aggregate compensation limitation in 5 U.S.C. 5307, which bars payment of compensation (including premium pay) under Title 5 in addition to basic pay to the extent such payment would cause the employee’s aggregate annual compensation received in a CY to exceed a specified annual rate². Since the section 1101 annual limitation is \$227,300, an employee may be entitled to premium pay under section 1101 that cannot be paid during CY 2009 due to the section 5307 limitation. In this case, any such excess payments should be deferred until the beginning of CY 2010 (See 5 CFR 530.203(f) and 530.204) and are to be counted toward the 2010 aggregate pay limitation under section 5307. (A deferred payment of premium pay is not considered in applying the applicable 2010 premium pay limitation under 5 U.S.C. 5547 or similar authority).

APPLICABILITY: This HR Bulletin applies to employees performing emergency work in connection with a military operation or an operation in response to a declared emergency in an overseas location under one of the following areas of responsibility:

- (1) Commander of the United States Central Command (CENTCOM). The following 21 countries are in the area of CENTCOM responsibility: Egypt, Jordan, Saudi Arabia, Yemen, Oman, United Arab Emirates, Qatar, Bahrain, Kuwait, Pakistan, Iran, Iraq, Afghanistan, Tajikistan, Kyrgyzstan, Kazakhstan, Uzbekistan, Turkmenistan, Seychelles, Syria, and Lebanon, or

² For most employees, this is the rate payable to the Vice President, or an expected \$227,300 in 2009.

- (2) Commander of the United States Africa Command (AFRICOM) for areas that were formally in the CENTCOM area but have since been moved under AFRICOM. The following six countries are in the area of AFRICOM responsibility: Djibouti, Eritrea, Sudan, Kenya, Ethiopia, and Somalia.

The following conditions must also be met for an employee to be eligible:

- (1) The employee is covered by 5 U.S.C. 5547 (dealing with limitations on premium pay);
- (2) The employee is assigned to work in an overseas location under the responsibility of the CENTCOM or AFRICOM and remains in that location for at least 42 consecutive calendar days. If the employee meets the 42-day requirement, this limitation may be applied to days before that requirement was met, as long as the employee was performing work in a covered and approved category on those days. The 42-day period may overlap a CY; that is, begin in 2008 and end in 2009, or begin in 2009 and end in 2010; and
- (3) The employee performs work in direct support of (or directly related to) an operation in response to an emergency declared by the President, or a military operation (including a contingency operation as defined in 10 U.S.C. 101(a) (13)).

PROCEDURES: Before applying the annual salary cap, webTA reports must be coded to allow employees to exceed the biweekly salary cap. To effect this change, a “4” must be coded in the RSO/Salary Cap field in the T&A Profile of webTA.

The following types of premium pay remain subject to the biweekly salary cap when other premium pay entitlements are subject to the annual salary cap: standby duty under 5 U.S.C. 5545(c) (1); administratively uncontrollable overtime under 5 U.S.C. 5545(c) (2); availability pay for criminal investigators under 5 U.S.C. 5545a; and firefighter overtime pay for hours in the regular tour of duty under 5 U.S.C. 5545b. Since the National Finance Center does not track the annual salary cap, agencies will have to track premium pay earned to ensure employees do not exceed the new annual cap.

Waivers resulting in receipt of additional premium pay that is normally creditable as basic pay for retirement (or any other purpose) is not to be considered basic pay and may not be used in computing a lump-sum payment for accumulated and accrued annual leave under 5 U.S.C. 5551.

REFERENCES: §1101 of Public Law 110-417, 5 U.S.C. 5547, 5 U.S.C. 5551, and 5 U.S.C. 5307

OFFICE OF POLICY AND PROGRAMS: Pamela Boyland, Director,
pboyland@doc.gov (202) 482-1068

PROGRAM MANAGER CONTACT INFORMATION: Sheila Fleishell, Program Manager, sfleishell@doc.gov, (202) 482-0022